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Regulatory
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Final Regulation Agency Background Document

Agency name	Department of Forensic Science
Virginia Administrative Code (VAC) citation	6 VAC 40-50
Regulation title	Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material
Action title	Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material
Date this document prepared	August 30, 2007

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Code §19.2-188.1(B), which becomes effective July 1, 2006, provides that the Department of Forensic Science (the Department) shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 regarding whether or not any plant material, the identity of which is at issue, is marijuana. These new regulations establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the Department.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On November 8, 2006, the Forensic Science Board adopted the regulations proposed by the Department entitled “Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material” (6 VAC 40-50).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

During its 2006 Session, the General Assembly amended Virginia Code §19.2-188.1 to require the Department to approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of §18.2-250.1 regarding whether or not any plant material, the identity of which is at issue, is marijuana. The amendment to §19.2-188.1 further specifies that the Department shall approve those marijuana field tests deemed accurate and reliable pursuant to regulations adopted in accordance with the Administrative Process Act. (2006 Va. Acts. c. 447).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

By amending Virginia Code §19.2-188.1 to allow law enforcement officers to testify to the results of marijuana field tests, the General Assembly determined that such an action would assist officers as they strive to protect the health, safety and welfare of Virginia’s citizens. The regulations are necessary to fulfill the General Assembly’s mandate. These regulations establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the Department.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

This proposed regulatory action is designed to ensure continuity from the Emergency Regulations in compliance with §19.2-188.1, to these proposed regulations. Effective in July of 2006, Virginia Code §19.2-188.1(B) was amended to permit law enforcement officers to testify at trial for simple possession of marijuana cases to the results of a field test regarding whether or

not any plant material, the identity of which is at issue, is marijuana. In accordance with §19.2-188.1(B), officers may only testify to the results of kits deemed accurate and reliable by the Department pursuant to regulations adopted in accordance with the Administrative Process Act. These regulations establish permanently the process the Department will follow for approving kits and describe where law enforcement agencies can find the list of approved kits. Without these regulations, there would be no permanent approved marijuana field tests for use by law enforcement.

The substantive provisions of the new regulation are as follows:

- 6 VAC 40-50-10. Definitions.
- 6 VAC 40-50-20. Authority for Approval.
- 6 VAC 40-50-30. Request for Approval.
- 6 VAC 40-50-40. Notice of Approval.
- 6 VAC 40-50-50. Maintenance of Approved Status.
- 6 VAC 40-50-60. Publication.
- 6 VAC 40-50-70. Liability.
- 6 VAC 40-50-80. Fees.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

There are no disadvantages to the public or the Commonwealth. The proposed regulations are necessary to fulfill the General Assembly's mandate. These regulations establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the Department.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

There have been no changes to the text of the regulation since the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
George (nonregistered public user)	Where do we sign up for the kit? What are the insurance issues?	Neither question pertains specifically to the regulations. The regulations do not discuss the purchase or distribution of kits. Additionally, "insurance issues" do not fall within the scope of the regulations. Because the user did not provide an email address, the Department was unable to respond or request further clarification of the questions.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Changes listed below have been made since the publication of the emergency action, and were included in the proposed regulation. No changes have been made since publication of the proposed regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
6 VAC 40-50-10			Added an apostrophe between the "r" and "s" in "manufacturers" contained in the definition "Manufacturers instructions and claims"
6 VAC 40-50-30		120 days	90 days – recommendation by DPB to lessen the time for approval of marijuana field tests

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulations have been in place as Emergency Regulations since July, 2006 and are consistent with objectives that promote the health, safety, environmental and economic welfare of the Commonwealth. There are no alternatives to these regulations, as they are fulfilling the statutory requirement made the General Assembly during its 2006 Session (2006 Va. Acts. c. 447).

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no family impact.